

UNITED STATE DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
CASE NO. 1:23-cv-01099

JOHN DOE,

Plaintiff,

v.

DUKE UNIVERSITY,

Defendant.

LOCAL RULE 5.5 REPORT

Pursuant to Local Rules 5.4 and 5.5, the Parties hereby jointly submit to the Court the following proposal for the handling of sealed documents in this case.

The Parties met and conferred during the Rule 26(f) Conference on February 26, 2024 regarding the issues of confidentiality raised in this case and the potential need for filing documents under seal. That discussion included the nature of any confidential documents that may be involved in the case, the possibility of using stipulations to avoid the need to file certain documents, the possibility of agreed-upon redactions of immaterial confidential information in filings to avoid the need for filing documents under seal, and the best proposal for handling those confidential documents. The Parties have agreed upon the “**Alternative Proposal for Cases with Many Confidential Documents**” from the Local Rule 5.5 Report.

In order to address claims of confidentiality and reduce the need to file multiple motions and briefs regarding sealing issues, the Parties propose the alternative procedure

set out below for consideration by the Court. Given the number of confidential matters on both sides (including but not limited to information protected under the Health Insurance Portability and Accountability Act (HIPAA) and under the Family Educational Rights and Privacy Act (FERPA)), the Parties believe this procedure will minimize the number of disputes regarding confidentiality and also reduce the number of filings with the Court. The Parties agree that this procedure would apply to all motions in this action including without limitation motions brought under any rule of the Federal Rules of Civil Procedure or the Local Rules of this Court. The proposed alternative procedures are as follows:

1. If a Party believes that a motion may necessitate the filing of confidential or potentially confidential material, the Party shall file the motion itself with the Court. Briefs and supporting materials will be exchanged between the Parties on the date that the briefs and supporting materials would otherwise be filed with the Court. The briefs and supporting materials will then be filed pursuant to the below procedures. If the cover motion itself contains or potentially contains confidential material, the Party shall file a notice of motion with the Court, and exchange and then file the motion, brief, and supporting materials pursuant to the below procedures.

2. On the date that a Party's brief in support of or in opposition to such motion is due, that Party will serve—but not file—its brief on the opposing Party, along with all supporting materials and exhibits that such Party intends to rely upon in support of its

positions. The Party will file a certificate of service with the Court showing the service of the brief on the opposing Party.

3. Where a Party filing a brief in opposition or a reply brief relies on supporting material or an exhibit cited in an earlier served brief, the Party will cite to the supporting material or exhibit using the same designation used in the earlier served brief to avoid having multiple copies of the same supporting material or exhibit in the Court's file.

4. Within 7 days after service of each brief and supporting materials and exhibits, the Parties will meet and confer to discuss the need to seal exhibits and/or portions of the briefing.

5. On the 14th day after the conclusion of all briefing for the motion (including reply briefing, as applicable), the Parties will file with the Court the following, as applicable:

(a) redacted, public versions of each Party's brief(s) and supporting materials and exhibits;

(b) unredacted, proposed sealed versions of each Party's brief(s) and supporting materials and exhibits, highlighted to show the portions that have been redacted in public filings; and

(c) a motion (joint if possible but separately if the Parties cannot agree) to seal the unredacted brief(s) and the unredacted supporting materials and exhibits, with non-confidential descriptions of the confidential material and

i. for those materials designated by the moving Party, a sufficient showing legally and factually as to why sealing is necessary and why less drastic alternatives to sealing will not afford adequate protection, and,

ii. in the case of separate motions, for those materials not designated by the moving Party, a statement that the materials are confidential items of another Party or entity who will be responsible for filing materials to support the sealed filing.

6. With that filing, the Parties will also contemporaneously submit to the assigned district judge's ECF mailbox the materials identified in the Rule 5.4 Checklist of the Local Rules.

7. The Parties agree that briefs may not be modified between the time of service and the filing, except to create redacted versions of the briefs.

This the 12th day of March, 2024.

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